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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION.

Case No.: 3:23-cv-04984-JSC

Plaintiff.

## **SECOND UPDATED JOINT CASE MANAGEMENT CONFERENCE STATEMENT**

VS.

## TESLA, INC.

Defendant.

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1 Pursuant to the Court's Pretrial Order No. 1 (ECF 65), Plaintiff U.S. Equal Employment  
 2 Opportunity Commission (EEOC) and Defendant Tesla, Inc. (Tesla), (collectively, the parties),  
 3 hereby submit the following Updated Joint Case Management Conference Statement (CMC  
 4 Statement). In accordance with the Court's Pretrial Order No. 2 and Civil Standing Order this CMC  
 5 Statement only addresses new issues. *See* ECF 65; Civil Standing Order at 2, Section E.

6 **1. Motions**

7 There are no pending motions, though the parties are continuing to meet and confer on  
 8 discovery disputes that they anticipate will be submitted to the Court in Discovery Dispute Letters,  
 9 summarized below in Section 3 (Discovery).

10 **2. Evidence Preservation**

11 The parties are negotiating their proposed Supplemental ESI Protocol which is due to be filed  
 12 by December 6, 2024. *See* ECF 71. It is unclear whether there will be outstanding disputes to submit  
 13 to the Court as Tesla's proposed revisions to the EEOC's November 22, 2024 draft are still pending  
 14 as of the timing of this filing. The Supplemental ESI Protocol will address issues of evidence  
 15 preservation, including ESI sources and relevant custodians, as well as document searches and  
 16 review, and privilege log exclusions.

17 **3. Discovery**

18 a. Status

19 The parties exchanged their first rounds of formal discovery, including requests for  
 20 production and interrogatories.

21 On December 2, 2024, in accordance with the parties' Protocol to Limit Discovery for  
 22 Potentially Aggrieved Individuals (ECF 67-68), the EEOC and Tesla each identified 10 potentially  
 23 aggrieved individuals (20 total) for whom they will disclose certain information as defined by the  
 24 protocol. The parties' disclosures for these identified PAIs are due March 3, 2024.

25 Tesla stated at the parties' December 3 meet and confer video conference that it may need  
 26 additional information from the EEOC to identify certain individuals in its HRIS systems who have  
 27 informed the EEOC of their desire to seek legal advice and assistance from the EEOC in connection  
 28 with this case (Potential Aggrieved Individuals). *See* EEOC-Tesla\_0039837-60. Tesla clarified

1 information it is requesting from the EEOC by correspondence sent on December 5, 2024, and the  
 2 EEOC will provide its response to Tesla's request, after which the parties will meet and confer as  
 3 needed. The parties will continue to meet and confer to try to resolve these issues without Court  
 4 intervention. The parties will be better positioned to assess the efficacy of this protocol and the need  
 5 for any other changes to the standard discovery rules after this first round of disclosures.

6       b. Pending Discovery Disputes

7           i. **Identifying Information Concerning Black Employees (Employee List)**

8       On September 24, 2024, the EEOC issued an Interrogatory pursuant to Fed. R. Civ. P. 33,  
 9 for identifying information for Black employees at Tesla's Fremont Facility. The parties met and  
 10 conferred regarding when Tesla would produce the employee list and other disputes concerning  
 11 Tesla's response to the Interrogatory on November 5, 2024, and December 3, 2024. On December 5,  
 12 2024, Tesla produced documents in Relativity format that it states includes a contact list containing  
 13 names, dates of employment, last known home address, last known email address, last known  
 14 telephone number, last known job title, last known supervisor, last known job family, last known job  
 15 function, and separation reason (if applicable) for all Black/African American employees at its  
 16 Fremont, California factory from May 29, 2015 to May 13, 2024. Tesla's production at 4:00 pm  
 17 December 5, 2024 was in Relativity format, which the EEOC will need to load into the platform to  
 18 assess for completeness. Tesla committed to supplement its contact list with the remaining historical  
 19 job title and supervisor data that it is currently in the process of collecting, and the EEOC seeks a  
 20 date certain for providing this information, which will enable the EEOC to focus its identification of  
 21 Potentially Aggrieved Individuals. The parties are finalizing a discovery dispute letter which will be  
 22 filed no later than Friday, December 6, addressing (1) whether Tesla must produce all identifying  
 23 information for its Black employees that EEOC requested, specifically the last 4 digits of each  
 24 person's SSN, and birthdate, to which requests Tesla objected; and (2) a deadline for Tesla to give  
 25 the EEOC a date certain by which it will identify each Black employee's historical supervisors,  
 26 departments, and job titles.

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ii. EEOC Communications with plaintiffs in *Department of Fair Employment and Housing v. Tesla, Inc.*, Alameda County Superior Court No. 22CV006830, and *Vaughn, et al. v. Tesla, Inc.*, et al., Alameda County Superior Court No. RG 17882082

The parties met and conferred on December 3, 2024, regarding EEOC's objections to Tesla's request to produce all certain communications between the EEOC, the California Civil Rights Department, and private plaintiffs' counsel in the aforementioned cases, and to log all privileged communications re: same. Counsel are preparing a discovery dispute regarding this disagreement to be submitted after the EEOC has an opportunity to respond to the draft dispute letter it received on December 5, 2024.

iii. **Deposition transcripts in actions concerning race harassment at Fremont Facility.**

On December 5, 2024, the EEOC requested to meet and confer with Tesla regarding its objections to the EEOC’s request to produce deposition transcripts in *Department of Fair Employment and Housing v. Tesla, Inc.*, Alameda County Superior Court No. 22CV006830; and *Vaughn et al., v. Tesla, Inc., et al.*, Alameda County Superior Court No. RG 17882082, as well as other actions raising allegations of harassment based on race (Black or African American) or retaliation at Tesla’s Fremont facility. After the parties meet and confer and Tesla learns the substance of the EEOC’s concern and has an opportunity to respond to same, this issue will be submitted to the Court in a discovery dispute letter, if necessary.

#### 4. Settlement and ADR

The parties' position that ADR is premature has not changed. The deadline for the parties to select an ADR process is May 26, 2025. *See* ECF 65.

## 5. Privilege

The parties are continuing to negotiate whether certain categories of documents need not be included on a privilege log. If the parties agree, these stipulations will be detailed in their Supplemental ESI Protocol.

Dated: December 5, 2024

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Telephone No. (202) 783-330017 *Attorneys for Defendant Tesla Inc.*18 **LOCAL RULE 5-1(i)(3) ATTESTATION**19 I, James H. Baker, am the ECF User whose ID and password are being used to file the Joint  
20 Case Management Conference Statement. In compliance with Local Rule 5-1(i)(3), I hereby attest  
that Tyree P. Jones concurs in this filing.

21 Dated: December 5, 2024

/s/ James H. Baker

22 James H. Baker, Senior Trial Attorney